IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Mr. JUSTICE M.H.S. ANSARI

and
THE HON'BLE Mr. JUSTICE T.CH.SURYA RAO

WRIT PETITION Nos.2213 and 4313 of 1996

WRIT PETITION NO : 2213 of 1996

Between:

M/s. Goldstone Technologies Ltd., 9-1-83&84 Amarchand Sharma Complex,S.D.Road, Sec'bad,
(A company incorporated under the provisions of the Companies Act) Rep.by its Manager Sri P.V.S.Sarma, S/o. Venkateswarlu,
aged 57 years, R/o. Hyderabad. THE CAUSE TITLE OF THE PETITIONER is amemdeed as per court order dt.16-5-2K, in W.P.M.P.11238/

..... PETITIONER

AND

1. The Union of India, rep. by its Secretary, Ministry of Finance, Govt. of India, Central Secretariat Building, New Delhi.
2. The Commissioner of Customs, Customs House, Fort,
Bombay-400 038.
3. The Asst. Commissioner of Customs, Customs House, Fort,
Bombay- 400 038.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to

issue any appropriate Writ, Order or Direction, preferably a Writ in the nature of Mandamus, declaring the action of the respondents in treating the raw-material imported by the petitioner company viz, Outer Layer of Heat Shrinkable Sleeve and Inner Layer of Heat Shrinkable Sleeve, as the one falling under Chapter 39 of the Customs Tariff Act, as illegal , arbitrary and contrary to law and consequently direct the respondents to treat the raw-material viz outer Layer of Heat Shrinkable Sleeve and Inner Layer of Heat Shrinkable Sleeve, imported by the petitioner company, as the one falling under Chapter 85.47 of the customs Tariff Act, and by permitting the petitioner company to pay the customs duty as well as countervailing duty as assessable under 85.47 of the customs Tariff Act, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr. B.CHANDRASEN REDDY

Counsel for the Respondents: Mr. ARAJASHEKAR REDDY

SC FOR CG

WRIT PETITION NO : 4313 of 1996

Between:

M/s Gold Stone Technologies Limited, 9-1-83 & 84, Amarchand Sharma Complex, S.D. Road, Secunderabad - 3, (a Company
incorporated under the provisions of the Companies Act), Rep. by its Director Y.V. Prasad, S/o. Y.U. Rao, 38 years
R/o. Hyderabad.

(The Cause title of the petitioner is amended as per court order dt. 16/5/2000 in WPMP 11239/2000.)

..... PETITIONER

AND

1. The Union of India, Rep. by its Secretary, Ministry of Commerce,
Govt. of India, Central Secretariat Building,
New Delhi.
2. The Commissioner of Customs, Customs House,
Fort, Bombay - 400 038.
3. The Assistant Commissioner of Customs, Customs House,
Fort, Bombay - 400 038.
4. The Assistant Commissioner of Customs, International Air Cargo
Complex, Sahar, Bombay.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate Writ, Order or direction, preferably a Writ in the nature of Mandamus, declaring the action of the respondents in treating the raw-material imported by the petitioner company, viz. Outer Layer of Heat Shrinkable Sleeve and Inner Layer of Heat Shrinkable Sleeve, as the one falling under Chapter 39 of the Customs Tariff Act, as illegal, contrary to law, and arbitrary, and consequently direct the respondents to treat the raw-material viz. Outer Layer of Heat Shrinkable Sleeve and Inner Layer of Heat Shrinkable Sleeve, imported by the petitioner company, as one falling under Chapter 85.47 of the Customs Tariff Act and by permitting the petitioner company to pay the customs duty as well as countervailing duty a assessable under Chapter 85.47 of the Customs Tariff Act, without reference to the internal Standing Order, and to pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr. S.RAVI

Counsel for the Respondents: Mr. A.RAJASHEKAR REDDY

SC FOR CG

The Court made the following :

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ORDER: (per Hon'ble Sri Justice M.H.S.Ansari)

The short question arising for consideration in these writ petitions is whether the raw material that has been imported by the petitioner company falls under Chapter 85.47 of the Customs Tariff Act.

It is the case of the petitioner that it has imported the raw material i.e., (i) outer layer for heat shrinkable sheet (22 Ton in granule form) and (ii) inner layer for shrinkable sleeves of various dimensions and sizes. It is the further case of the petitioner that the raw material that has been imported is exclusively used by the petitioner company for manufacture of insulating components, namely, heat shrinkable sleeves to be supplied only to the Department of Telecommunications and Mahanagar Telephone Nigam Ltd. Therefore, the raw material that has been imported by the petitioner, it was contended, falls under Chapter 85.47 and not under Chapter 39 of Customs Tariff Act, 1975. The stand of the respondent Customs authorities appears to be that the outer layer is in the form of polythelene granules. The imported goods are merely sheets of polythelene and as such the goods are more appropriately classifiable as polythelene sheets under CTH 3920 rather than

Chapter 85.47. According to the respondents, the assessment of the goods is to be made in accordance with the status of imported goods rather than its end use.

Mr. S. Ravi, learned counsel for the petitioner submitted that the matter is covered by the judgment of the Bombay High Court. In its judgment in **XL Telecom Pvt. Ltd. v. Union of India**, Bombay High Court had occasion to consider the question as to whether the articles in that case being "components for cable jointing kits" merit classification under Chapter 85.47 or Chapter 39 heading 26 of Customs Tariff Act. It was noticed that the cables have to be jointed so that they can go into running lengths as if they are original. The joints have to be insulated in a sophisticated manner so that they are completely dust, air and water proof ensuring continuous supply of power. The cables are of different sizes and actually insulation is to be achieved by automatic shrinking of the insulating sleeves to a pre-determined diameter by a single operation of heating. It was further noticed that the subject articles in that case being components for cables joining kits, plastic is used as one of the raw materials. It was further noticed by their Lordships that Chapter 39 of Customs Tariff Act covers "plastics and articles thereof". Heading 39.26 is an omnibus and generic entry. Chapter 85 covers, *inter alia*, insulating fittings. Heading 85.47 contains a specific description of insulating fitting. Their Lordships applied the principle of *generalia specialibus non-derogant*. It was observed that the thread of this principle runs all-through even in the general rules of interpretation of entries under the CTA. Their Lordships further noticed the Customs Tariff Advice given by the Board by their letter dated 17th November 1989 wherein it is stated that heat shrinkable material falls under Chapter 85 of CTA. Their Lordships considered the contention raised with respect to the bills of entry wherein the subject articles in that case were described as components for cable jointing kits and in one or two bills the articles were described as raw materials for manufacturing of components for cable jointing kits – insulating materials – un-expanded sleeves. Their Lordships negatived the contention of the respondent authorities that at least those items merit classification under Chapter 39 in the following terms:

"……..Even raw-material for manufacture of components of cable jointing kits cannot be classified as general plastic articles under omnibus Heading 39.26. They are also insulating material capable of automatic shrinking to pre-determined diameters by a single operation of heating. Heading 85.47 is more akin to these articles than Heading 39.26."

We are in respectful agreement with the view of their Lordships in the case cited supra. Also, we note that the above decision has been accepted by the respondents, in that, no appeal against the same was filed.

In the light of the above, the contention of the respondent authorities that raw materials for manufacture of components of cable jointing kits in the case on hand, is to be classified as general plastic articles under Chapter 39, has to be rejected. It is not disputed that heat shrinkable sleeves are formed when the two sleeves are fused together to form a heat sheet which at that stage acquire a characteristic of raw material for manufacture of heat shrinkable materials. The same are thus the raw materials in the manufacture of insulating components. As noticed, in the judgment cited supra, the raw material for manufacture of components of cable jointing kits, it was held, are also insulating material capable of automatic shrinking, cannot be classified as general plastic articles under omnibus heading 39.26. The objection of the respondents in the case on hand appears to be only with respect to the form in which the raw materials are imported and not that the same is a raw material for manufacture of insulating components. This stand of the respondents for the reasons afore-stated cannot, therefore, be sustained nor can it be said that the imported goods can be classified as falling under the omnibus entry.

The objection as to the alternative remedy in the instant writ petition being available to the petitioner was also raised in the context of the maintainability of the two writ petitions. This objection, in our view, does not merit consideration keeping in view that the writ petitions were admitted in the year 1996 and it would be unjust and inequitable at this distance of time to relegate the petitioner to avail of the alternative remedy, which, now is time barred. Furthermore, the matter can be decided on the settled position in law, on the authority of the judgment of the Bombay High Court cited supra.

In the facts and circumstances of this case, we direct the respondents to treat the imported raw materials namely, outer layer of heat shrinkable sleeves (in granule form) and inner layer of heat shrinkable sleeves as one falling under Chapter 85.47 of the Customs Tariff Act. The petitioner shall accordingly be liable to pay the customs duty as well as countervailing duty as assessable under Chapter 85.47 of

the Customs Tariff Act.

The writ petitions are accordingly allowed in the terms as above. However, in the facts and circumstances, there shall be no order as to costs.

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(M.H.S.ANSARI, J.)

December 2004.

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(T.Ch.SURYA RAO, J.)

ARS

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Friday the Thirty First day of December, Two Thousand and Four.

ASST. REGISTRAR.

To

1. The Secretary to Government of India, Ministry of Commerce,
Central Secretariat Building,
New Delhi.

2. The Secretary to Government of India, Ministry of Finance, Central

Secretariat Building, New Delhi.
3. The Commissioner of Customs, Customs House,
Fort, Bombay - 400 038.
4. The Assistant Commissioner of Customs, Customs House,
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6. Two CD copies.